IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7413, 7414 and 7415 all of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SOLANKI ODHAVJI BHAGWANJI

Versus

STATE OF GUJARAT

Appearance:

MR JR NANAVATI for Petitioner

NOTICE SERVED for Respondent No. 1

Mr.IM Pandya AGP for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 05/10/2000

ORAL JUDGEMENT

Learned advocate Mr.Nanavaty has appeared for the petitioner in this group of petitions. Learned AGP Mr. IM Pandya has appeared for the respondent authorities in this group of petitions. None present on behalf of the

rest of the respondents. In this group of petitions, common order passed by the Gujarat Revenue Tribunal ("Tribunal" for short) in revision application No. 912 of 1988, 453 of 1988 and 454 of 1988 dated 16th February,1990 as well as the order passed by the tribunal in review application no. 28 of 1990 to 30 of 1990 dated 31.8.1990 are under challenge.

In this petition, the question for consideration of this Court is that considering the provisions of sec. 2(2) read with section 2(6) of the Tenancy Act alongwith Explanation III thereof, whether the purchase of the agricultural land by the purchaser of agricultural lands situated at village Pethapur in Gandhinagar by the petitioner was in violation of the provisions of section 63 of the Tenancy Act or not and whether the purchasers could be treated as an agriculturist as provided under the Act or not and whether the transfers pursuant to such transaction was valid and lawful or not. It is the submission of Mr. Nanavaty, learned advocate for the petitioners herein that the agriculturists of the State of Gujarat are entitled to purchase the agricultural land in any part of the State and if any restriction is imposed, it would amount to unreasonable restriction on their fundamental rights. He has also submitted that the said provisions have been amended and limit of having agricultural lands within 8 km. periphery has now been removed and, therefore, the question of violation of sec. 63 does not arise. According to him, an agriculturist mentioned in section 63 read with sec.2(2) and 2(6) of the Tenancy Act need not necessarily be an agriculturist who reside within the limit of eight km and, therefore, agriculturist residing in any part of the State is entitled to purchase the land in any part of the State. The transactions in all these three cases carried out between the parties are as under:

Date of Regd. sale deed	Date of mutation entry	Date of notice u/s.84C	ALT's Ten. Case No.
12.10.81	14.10.81	25.9.83	792/86
19.1.83	19.1.83	25.9.83	793/86
8.3.82	19.1.83	25.9.83	794/86

Learned advocate Mr.Nanavaty has submitted that more than four years have passed after the purchase of the lands in question and the Mamlatdar has initiated proceedings under sec. 84C of the Act which cannot be

said to have been initiated within reasonable period and, therefore, relying upon the decision of this Court in case of State of Gujarat versus Patel Raghav Natha reported in 10 GLR page 992, he has submitted that the suo motu powers can be exercised by the authority within some reasonable period. He has submitted that in the instant case, such suo motu powers have not been initiated within reasonable period.

On the other hand, learned AGP Mr. Pandya appearing for the respondent authorities has submitted that the Tribunal has considered all the averments made by the petitioner in revision and has considered in detail each and every aspects of the matter. He has further submitted that the contention as regards delay has also been answered by the tribunal and, therefore, this court, while exercising powers under Article 226/227 of the Constitution of India, should not interfere with such order passed by the tribunal. He has further submitted that this Court should not act as an appellate court when there are concurrent findings of fact recorded by the authorities below. He has further submitted that there is no error apparent on the face of the record and there is also no infirmity in the orders passed by the tribunal and, therefore, these petitions should be dismissed with costs.

I have considered the arguments advanced by the learned advocates for the parties. I have also perused the orders in question passed by the tribunal in revision as well as in review.

In all these three cases, in respect of the sale deed wherein the petitioner has purchased the land in village Pethapur District Gandhinagar, 84C proceedings were initiated by the Mamlatdar and ALT and has passed order dated 21.5.1986 and has held that the transaction was invalid and was against the provisions of the Bombay Tenancy and Agricultural Lands Act and, therefore, the land would vest in the State Government free from all encumbrances. Said orders of the Mamlatdar were challenged by the petitioner before the Prant Officer in appeal which came to be dismissed by order dated 23.12.87 against which revision applications were preferred as stated above which came to be rejected on 16.2.1990 and applications for review of the orders passed in revision were also dismissed by the tribunal on 31st August, 1990.

Upon perusal of the tribunal's order, it appears that the tribunal has considered all the aspects of the matter as well as the submissions of the learned

advocates for the parties in detail. The tribunal has considered that illegal procedure has been adopted by the petitioners and in all three cases, there were more than one purchaser but appeal has been filed by only one namely Odhavji Bhagwanji. The tribunal has also observed that at the time of purchase of the agricultural lands in village Pethapur, the petitioners were not agriculturist in Junagadh District. Even if they were agriculturist in village Bodka, District Junagadh, distance between the land in question is more than 300 km and, therefore, the they cannot be treated as an agriculturists as per sec.2(6) of the Act. The tribunal has also considered that enough opportunities were given to the petitioners by the authorities below and adjournments were also granted time and again and some of the parties who appeared were also examined. The tribunal has also considered that even if it is assumed that Odhavji was holding land in Junagadh District as per village form 7/12, it is only upto 1976 and not beyond that period and, therefore, it is creating some suspicion that Odhavji would be holding agricultural land while he purchased the land in question in the year 1981 in village Pethapur and, therefore, he could not legally be an agriculturist at village Pethapur where he has purchased the lands in the year 1981. In view of the above consideration, ultimately, considering the provisions of sec. 63 of the Act, the tribunal concluded that the purchasers could not be treated as agriculturists within the meaning of sec.2(2) read withsec.2(6) Explanation III of the Act and in view of such findings, the tribunal rejected the revision applications which were referred before it by the petitioners.

Having perused the entire order of the tribunal in revision as well as in review, I am of the opinion that the tribunal has not committed any error apparent on the face of the record. In para 4 of the order passed by the tribunal in review application, the tribunal has appreciated the contention as regards delay in initiation of the proceedings under sec. 84C. The tribunal considered the the decision reported in 25 G.R.T.L.R. page 9 wherein exercise of the powers after three years' period has been considered to be unreasonable. The tribunal has also considered the decision of this court in special civil application no. 2770 of 1990 decided on 1.3.1990. The contentions as regards delay raised in para 4 have been appreciated by the tribunal in para 5 of the order in review. The tribunal has taken into consideration the date of registered sale deed of each transaction as well as the date of mutation entry and the

date of notice under section 84C and after taking into consideration the relevant date of sale deed, mutation entry and date of issuance of notice under section 84C, the tribunal was of the view that the proceedings were initiated in the right earnest without any undue or unreasonable delay undersec.84C in the year 1983. Upon perusal of the findings of the tribunal, I am of the view that the findings of the tribunal are based on appreciation of the record and I donot find any infirmity therein. The tribunal was right in observing that there has not been any unusual or unreasonable delay between the date of purchase and the first notice issued by the Mamlatdar under section 84C. The tribunal has also observed that it is on record that the purchasers have purchased the lands at village Pethapur whereas they claim to be agriculturists in village Bokda in Manavadar Taluka of District Junagadh whichis about 300 km away as admitted even by the party in his deposition dated 23.1.1984. In view of such facts of the case, the tribunal has observed that the judgment cited by the learned advocate before it was not applicable on facts. I am of the view that the tribunal is justified in observing and finding that there has not been any unreasonable delay in initiating the proceedings under section 84C. The tribunal has relied upon the judgment of this court in special civil application no. 1430 of 1989 dated 1.3.1990 wherein the contention raised that the Mamlatdar and ALT has no jurisdiction to initiate the proceedings after lapse of ten years for declaring transfer void has been negatived by this court. In the said decision, it has been observed by this court as under:

> "In my view, this submission is without any substance because no time is prescribed under the Act for evicting unauthorized ocupation.The competent authority can initiate proceedings only when the attention of the competent authority is drawn to the illegal transfer."

In view of the above findings and the decision of this court, the tribunal has rejected review applications preferred by the petitioner.

Having perused the order of the tribunal, I am of the opinion that there is no unreasonable delay in initiating the proceedings by the Mamlatdar under section 84C of the Tenancy Act. Further, the learned advocate for the petitioner has also not been able to point out any infirmity and/or irregularity in the orders passed by the tribunal. There is no error which would require

interference of this court in exercise of the powers under Article 226 and/or 227 of the Constitution of India. There are concurrent findings of fact recorded by the authorities below as confirmed by the tribunal in revision. Since the learned advocate for the petitioner has not been able to point out any infirmity, such concurrent findings of fact recorded by the authority below cannot be reappreciated by this court in exercise of powers under Art. 226/227 of the Constitution of India. This court cannot reassess the evidence which is assessed by the authorities below. Therefore, I am of the view that these petitions are required to be dismissed.

For the reasons recorded above, these petitions are dismissed. Rule is discharged in each of the petitions. Interim relief, if any, shall stand vacated with no order as to costs.

5.10.2000 (H.K. Rathod,J.)

This group of three petitions was heard by this Court on 5th October, 2000. At that time, learned advocate for the petitioner in these petitions has made his submissions at length and thereafter, learned AGP Mr. Pandya has also made his submissions. Thereafter, this Court has dictated this judgment in this group of petitions and has passed the orders as aforesaid. However, before the judgment could be transcribed and signed by this court, learned advocate Mr. J.R.Nanavaty has come in the Chamber on 10th October, 2000 and has pointed out that in this group of petitions, he wants to cite some authorities in support of his submissions. Considering his request, the Court has allowed him to cite such authorities and has waited for him. Thereafter, on 12th October, 2000 i.e. today, learned advocate for the petitioners has cited the following three judgments:

(1) Shah Bhojraj Kunverji Oil MIls and Ginning Factory versus Subhash Chandra Yograj Sinha reported in AIR 1961 SC 1596.

(2) Mohanlal Chunilal Kothari deceased and afterhis death his legal heirs and legal representatives versus Tribhovan Haribhai Tamboli reported in AIR 1963 SC 358.

(3) Darshan Singh versus Ram Pal Singh and another reported in AIR 1991 SC 1634.

I have considered the authorities which have been cited by the learned advocate Mr. Nanavaty for the petitioners.

In case of Shah Bhojraj Kunverji Oil Mills and Ginning Factory (supra), the apex court was considering the provisions of the Bombay Rents, HOtel and Lodging Houses Rates Control Act, 1947. The matter at issue was the termination of tenancy. In the said decision, on termination of tenancy by efflux of time, the land lord filed a suit for possession of the premises. The tenant having lost in the trial COurt and in the High Court on the ground that S.12 of the Act was prospective and did not apply to pending cases, approached the apex court. It was held in the said decision by the Hon'ble Supreme court that the decisions of the High COurt and the trial Court were erroneous and must be set aside.

In case of Mohanlal Chunilal Kothari (supra), the provisions of the Bombay Tenancy and Agricultural Lands Act, Sec. 88 (1)(d) thereof in particular was under consideration.

In case of Darshan Singh (supra), the provisions of the Punjab Custom (Power to Contest) Act, (2 of 1920) was under consideration. In the said case, it was observed that section 7 of the said Act as amended in 1973 places a complete bar to contest alienation of ancestral or non ancestral immovable property on the ground that such alienation was contrary to custom is retroactive in its operation and applies to pending proceedings.

I have considered the decisions cited by learned advocate Mr. Nanavaty. In the case before hand, the lower authority has initiated proceedings for breach of section 63 of the Tenancy Act against the petitioners in suo motu exercise of the powers under sec. 84(C) of the Tenancy Act. Ultimately, the below authorities has come to the conclusion that the petitioner was not agriculturist within the meaning of sec.2(2) 2(6) read with sec. 63 of the Tenancy Act and therefore, order has been passed by the Mamlatdar and, thereafter, higher authorities. Thereafter, having concurrent findings of facts recorded by the below authorities, present petitions were filed by the petitioner before this Court. Therefore, the the facts of the case before hand are not identical or similar to the facts of the judgments of the apex court as cited by learned advocate Mr. Nanavaty. Therefore, with due respect to the law laid down by the apex court in the above referred decisions, I am of the

view that the authorities cited by learned advocate Mr.Nanavaty are not applicable to the present case, on facts. Since the judgment cited by Mr. Nanavaty are not applicable to the facts of the present case, the above order shall stand.

12.10.2000. (H.K. Rathod,J.)

Vyas